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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,211	01/21/2004	Robert J. Peterka	1661.001US1	2507

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EXAMINER

APANIUS, MICHAEL

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/762,211	PETERKA, ROBERT J.	
	Examiner	Art Unit	
	Michael Apanius	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 103-170 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 103-170 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This office action is in response to the amendment filed on 9/18/2006. The amendments to claims 3, 103, 110, 112, 114, 124-127, 133, 137, 139, 140, 143, 147-150 and 152; the addition of new claims 153-170; the amendments to the specification; and the replacement drawing sheets are acknowledged. Currently, claims 1-3 and 103-170 are pending.

#### *Drawings*

2. The drawings are objected to because in the replacement figure 17B, it appears that the upper recitation of "VOR<sub>R</sub>" should be --VOR<sub>L</sub>--. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If

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the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The disclosure is objected to because of the following informalities: at page 47, line 25, it appears that "ea" should be --ears--. Appropriate correction is required.
4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Objections***

5. Claims 133-152 and 162-170 are objected to because of the following informalities: at claim 133, line 5, it appears that "and" should be deleted and at claim 133, lines 7-8, it appears that "function, wherein the computer readable medium has computer-executable instructions for performing a method comprising:" should simply be --function; and --. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claims 1-5 and 103-170 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Lines 2-4 of independent claims 1, 3, 103, 132 and 133 appear to be indefinite. In particular, it is unclear if the recitation of "for each ear of a subject," means that the "turning off" and "evaluating" steps are performed twice with opposite ears or if the "turning off" and "evaluating" steps, without repetition, correspond to "for each ear" because these two steps in combination refer to both ear.

***Claim Rejections - 35 USC § 103***

8. Claims 1, 2 and 132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Epley (US 6,800,062). Epley discloses a method comprising: turning off vestibular responses in one ear of the subject and evaluating vestibular response in the other ear of the subject (paragraph bridging columns 23 and 24). Note that the rapid acceleration drives a semicircular canal on one side into inhibitory saturation which equates to applying a stimulus having a component directed to turning off vestibular responses in one ear by completely inhibiting activity in a semicircular canal. Any resulting saccadic movement is indicative of the vestibular responses in the other ear. Furthermore, the above method can be carried out via computer control (i.e. see abstract, line 3) which is deemed to include a computer readable medium having computer-executable instructions for performing the method. Epley does not expressly disclose analyzing the vestibular responses to characterize an asymmetry of an inner balance function with respect to the above method. However, Epley does teach analyzing vestibular

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responses to determine a particular semicircular canal that may be hypofunctional (column 19, lines 50-57). Epley further teaches characterizing lateralization information of each ear based on testing each ear independently (column 23, lines 28-30).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have tested the vestibular responses of each ear in the above noted method to determine a particular semicircular canal that is hypofunctional as disclosed and taught by Epley in order to characterize an asymmetry of an inner ear balance function so that treatment can be optimized.

#### ***Allowable Subject Matter***

9. Claims 3-5, 103-131 and 133-170 appear to contain allowable subject matter.

#### ***Response to Arguments***

10. Applicant's arguments with respect to the prior art rejections have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Apanius whose telephone number is (571) 272-5537. The examiner can normally be reached on Mon-Fri 8am-4:30pm.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MA

*Maureen H. Eschburg*  
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PATENT EXAMINER  
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